

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

CASE NO. CR18-217RSM

Plaintiff

ORDER DENYING MOTION FOR
REVIEW OF DETENTION ORDER

JEROME ISHAM,

Defendant.

This matter comes before the Court on the Motion for Review of Detention Order filed by Defendant Jerome Isham. Dkt. #360. The Court has determined that oral argument is unnecessary. Mr. Isham moves for reconsideration of Magistrate Judge Donahue's August 16, 2018, Order that he be detained pending trial, Case No. 18-cr-199-JCC, Dkt #21. Mr. Isham's reasons for bringing this Motion now, after being detained for almost two years, are 1) that the COVID-19 pandemic is a significant change in circumstances imposing an unreasonable risk of harm from contagious disease while he is held in detention, and 2) the conditions of confinement where he is detained pose an unreasonable risk of future harm and deprive him of effective assistance of counsel. Dkt. #360 at 4–5. Mr. Isham is currently being detained at the Federal Detention Center (“FDC”) in SeaTac, Washington, where he alleges that he has been denied access to the law library and that he is unable to review discovery materials provided by his

1 defense counsel. *Id.* He has been informed that legal visitation may resume at the end of June,
 2 2020. *Id.* at 5. Mr. Isham does not cite to any personal medical issues or COVID-19 risk factors.
 3 He does not articulate any issue with his detention at FDC that could not be said to apply to every
 4 other detainee.

5 An appeal of a magistrate's detention order is governed by 18 U.S.C. § 3145(b), which
 6 provides that "If a person is ordered detained by a magistrate judge... the person may file, with
 7 the court having original jurisdiction over the offense, a motion for revocation or amendment of
 8 the order." The District Court judge with original jurisdiction then reviews *de novo* the
 9 Magistrate Judge's detention order. *See United States v. Koenig*, 912 F.2d 1990, 1192 (9th Cir.
 10 1990). In ruling on a motion for pretrial detention, the Court must answer the same questions as
 11 the Magistrate Judge; whether any condition or combination of conditions will reasonably assure
 12 the appearance of the defendant as required, and the safety of any other person and the
 13 community. 18 U.S.C. § 3142(f). The United States typically bears the burden of showing that
 14 defendant poses a danger to the community by clear and convincing evidence, and it bears the
 15 burden of showing that a defendant poses a flight risk by a preponderance of the evidence. *United*
 16 *States v. Gebro*, 948 F.2d 1118, 1120 (9th Cir. 1991). However, the Bail Reform Act expressly
 17 provides that:

20 [s]ubject to rebuttal by the person, it shall be presumed that no
 21 condition or combination of conditions will reasonably assure the
 22 appearance of the person as required and the safety of the
 23 community if the judicial officer finds that there is probable cause
 24 to believe that the person committed an offense for which a
 25 maximum term of imprisonment of ten years or more is prescribed
 26 in the Controlled Substances Act (21 U.S.C. 801 et seq.) . . . or an
 27 offense under section 924(c) . . . of title 18 of the United States Code
 . . .

18 U.S.C. § 3142(e).

1 Defendant has accurately recounted the charges facing Defendant Isham and the
2 procedural history of this case, Dkt. #360 at 2–4, and the Court finds it unnecessary to restate all
3 of this background information as it is well known to the parties. Defendant is alleged to have
4 been involved in the distribution of over 400 grams of fentanyl pills, as well as the distribution
5 of furanyl fentanyl pills. Dkt. #279 at 1-2. These carry a mandatory minimum penalty of ten
6 years in prison. Defendant is also facing a five-year mandatory minimum consecutive sentence.
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8 As an initial matter, the Court finds that generalized concerns over the current COVID-
9 19 pandemic alone are not a valid basis to reopen the issue of detention. A detention order may
10 be reopened “at any time before trial if the judicial officer finds that information exists that was
11 not known to the movant at the time of the hearing and that has a material bearing on the issue
12 whether there are conditions of release that will reasonably assure the appearance of such person
13 as required and the safety of any other person and the community.” 18 U.S.C. § 3142(f).
14 Defendant’s main basis to reopen detention relies on speculation as to the risk he faces of
15 contracting the disease at the FDC, where the new coronavirus has not been detected, without
16 any analysis of his personal risk factors. The Court finds that Defendant’s information is too
17 speculative and generalized to have a material bearing on the above issues.
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19 There is a presumption of detention in this case because Defendant is facing a ten-year
20 mandatory minimum term of imprisonment. Even if Defendants’ new COVID-19 information
21 was not speculative, the Court finds that Defendant’s age and lack of any underlying medical
22 conditions would not make him particularly vulnerable or otherwise part of a high-risk group.
23 This is a significant point. Although the parties can debate whether or not the new coronavirus
24 is or will be spreading at the FDC, the Court is not convinced that this constitutes a significant
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1 enough risk to this Defendant's health to warrant release given the initial bases for Judge
2 Donahue to order detention. *See* Case No. 18-cr-199-JCC, Dkt #21.

3 Defendant also argues that he is being deprived of his Sixth Amendment right to counsel
4 given the limitations on attorney visits at the FDC and lack of access to the law library. Dkt.
5 #360 at 4–5. Defendant is still able to communicate with counsel via telephone, although his
6 access has apparently been delayed or disrupted due to the FDC's efforts at social distancing.
7 The Court finds that, under the circumstances, this is sufficient to provide Defendant with access
8 to counsel. Mr. Isham's access to the law library should resume soon. Future issues with his
9 ability to review discovery materials can be addressed in a separate order if necessary and do not
10 alone warrant release.

12 Having reviewed the briefing, along with the remainder of the record, the Court hereby
13 finds and ORDERS that the Motion for Review of Detention Order filed by Defendant Jerome
14 Isham, Dkt. #360, is DENIED.

16 DATED this 26th day of June, 2020.

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20 RICARDO S. MARTINEZ
21 CHIEF UNITED STATES DISTRICT JUDGE
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